86-2023

No. 86-

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1986

CARL J. SHEPARD,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1) When Petitioner Was Indicted for Knowingly Making a False Statement or Report for the Purpose of Influencing an Insured Bank Contrary to the Provisions of 18 United States Code, §1014, and the Alleged False Statement Is an Appraisal, Is That Appraisal a Statement of Material Fact or an Opinion Which Cannot Sustain a Violation of the Statute?

2) When Petitioner Is Indicted for Knowingly Making a False Statement or Report for the Purpose of Influencing a Federally Insured Bank Contrary to the Provisions of 18 United States Code, §1014, and the Statement Alleged to Have Been Submitted in Violation of the Statute Is an Appraisal, Must the Government Demonstrate Beyond a Reasonable Doubt That the Appraisal Was Inaccurate Before It Can Convict?

3) Can an Appraisal Submitted to a Bank Allegedly in Contravention of 18 United States Code, §1014 Be Material for the Purpose of Influencing the Action of the Bank When the Bank Had Already Predetermined to Make the Loan in Question?

LIST OF PARTIES

The caption of the case in this court contains the names of all parties.

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vs.

THE UNITED STATES OF AMERICA,
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REFERENCE TO REPORTS

The opinion to which certiorari is here sought has not been published and there are no citations to official or unofficial reports respecting it.

GROUNDS ON WHICH JURISDICTION IS INVOKED

Jurisdiction lies in the Court pursuant to 28 United States Code, §1254 (1). The Opinion of the United States Court of Appeals for the Eleventh Circuit here sought to be reviewed was entered on December 11, 1986. A timely filed Petition for Rehearing directed to that Opinion was denied by an order entered April 23, 1987.

CONSTITUTIONAL PROVISIONS, TREATIES AND STATUTES

18 United States Code, §1014.

§1014. Loan and credit applications generally; renewals and discounts; crop insurance;

"Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action . . . upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than $5,000 or imprisoned not more than two years or both."

STATEMENT OF THE CASE

Your Petitioner, Carl J. Shepard, was indicted in the United States District Court in and for the Middle District of Florida and pursuant to that indictment, was convicted on three substantive counts of violation of Title 18, United States Code, §1014. That statute penalizes persons who knowingly and willfully make and cause to be made a false statement as to material fact in connection with a loan application to a federal deposit insurance corporation insured bank for the purpose of influencing the action of the bank. Petitioner was also indicted and convicted on one count of conspiracy to violate 18 United States Code, §1014 with Vernon Vickers, his Co-Defendant.

Your Petitioner, Carl Shepard, has been a resident of Manatee County in Florida for some 25 years. He came

to Manatee County as a carpenter and gradually worked himself up into owning a lumber business and later a flea market.

Petitioner also owned a herd of cattle which he had purchased from various persons paying in excess of $159,000.00 for the herd.

Shepard sold the herd of cattle to his alleged co-conspirator and his Co-Defendant, Vernon Vickers.

Vickers was a County Commissioner for Manatee County, having been elected to that position in 1980. Shortly after his election as County Commissioner, he began to borrow money from the First National Bank of Florida, a local bank in Manatee County.

First National Bank of Florida was a depository for Manatee County money. The bank had several different accounts, including one from the School Board, one from the County Tax Collector and at one time the County's Investment Account.

At the trial, the Government called Roy Jackson, formerly the Executive Vice President of the bank as a witness. Mr. Jackson had been caught trying to extort money from a bank customer and had been tried and convicted in the Federal Court for that offense. He testified in the case at bar under a grant of immunity. Jackson testified that the County's money, which was kept in his bank, and in particular, the investment account which had $40,000,000 or more in it, produced over a quarter of million dollars per year in profits for the bank and the bank did not have any other single account that it made more than a quarter of a million dollars from.

Vickers had arranged to buy Shepard's herd of cattle and he wanted to borrow money from the bank on the cattle. Jackson, the President of the bank, testified:

"QUESTION: Isn't it true sir, that what you knew was that Vernon Vickers was a County Commissioner just elected, and the county had $40,000,000 to $50,000,000 in your bank that was making over a quarter of a million dollars for your bank and you wanted to make sure that the County Commission was friendly with you; isn't that correct sir? Isn't that the real reason for the loan and steps you took in making this loan?

ANSWER: Yes."

In connection with the making of these cattle secured loans, the bank, through Mr. Jackson, as Executive Vice President, asked for appraisals of the cattle. While there is conflict in the testimony surrounding the obtaining of these appraisals, it appears that Mr. Jackson from the bank determined that he wanted appraisals of the cattle to put in his loan file each time he made a cattle loan. (There were several cattle loans made by Mr. Vickers some of which did not involve cattle purchased from Shepard.) The appraiser used by the bank was named Dave Ballard. Mr. Ballard testified as a government witness that he had prepared a document entitled "cattle appraisal" at the request of Mr. Shepard. He testified that Mr. Shepard had supplied Ballard with a sheet of paper with figures on it and said that he needed the appraisal written up. Mr. Ballard took the appraisal to one of Mr. Shepard's clerks and had her write it up and signed it. This happened in essentially the same fashion on three separate occasions according to Mr. Ballard. Mr. Ballard had never performed any cattle appraisals for Carl Shepard, although he had bought a lot of cattle from Mr. Shepard.

Mr. Ballard testified at trial as to what he thought the worth of the cattle on his appraisals was and he testified that he thought the cows would be worth less than he showed on his appraisals. However, he based this on the fact that he was valuing the cattle at trial on the basis that they were going to be sold to be ground out for hamburger meat. Mr. Ballard testified that he was familiar with Mr. Shepard's herd of cattle because he was there when part of the herd was purchased and he gave Mr. Shepard cattle advice and worked with his herd. While Mr. Ballard originally testified that he thought the cows would be worth about 40 cents a pound, on cross-examination, it developed that he knew that calves which he had taken to the Arcadia Auction (Arcadia is a cattle town located in the area) around that time for Mr. Shepard, sold up around 80 to 90 cents a pound.

There was no other testimony and certainly no expert testimony as to what the value of any of the cattle which were the subject of the appraisals was at the date of their appraisal except for the testimony of an expert produced by the defense. George Amole, who was a cattle appraiser by profession, testified as to the value of the cattle which was approximately the amount contained in the appraisal prepared by Mr. Ballard. Additionally, Mr. Amole testified that when making an appraisal, if you were already familiar with the cows, and were familiar with the herd and had been in the herd, it would not be necessary to see them again in order to make the appraisal.

The jury having convicted Mr. Shepard, an appeal was taken from the judgment of conviction to the United States Court of Appeals for the Eleventh Circuit which affirmed the conviction in the opinion to which certiorari is here sought. (A1 et seq.).

ARGUMENT

1) An Appraisal Is an Opinion and Not a Statement of Fact Which Can Sustain a Conviction Under the Statute.

In the case at bar, your Petitioner was indicted (appendix A6 et seq.; hereinafter in this Petition references to the appendix will be made by use of the symbol "A" with appropriate page number) on three substantive counts charging that he knowingly and willfully made and caused to be made a false statement as to a material fact in a "cattle appraisal" submitted in connection with an application for a loan. Counts III, IV and V of the indictment charge him in precisely those terms. The Grand Jury did not elect to charge him under the portion of the statute making it an offense for anyone to willfully over value any land, property or security.

At the trial, the evidence consisted of the appraisal prepared by Mr. Ballard and submitted to the bank and Mr. Ballard's testimony in effect stating that at time of trial, his opinion as to the value of the cattle was that they were worth less than the amount he valued them at in the appraisal. The term appraisal is defined in Webster's new international dictionary, second edition, page 132 as the act or stated result of appraising, appraisement; valuation of property by the estimate of one authorized. To appraise is defined in the same source as to set a value on, as goods, lands, or the estate of a deceased person; to estimate the amount of, especially a loss, as by fire.

There has been very little in the case law specifically treating the question, although a great deal of law has transpired as to the admissibility of appraisals and esti-

mates of value as opinion evidence. In *Baker v. Goddard,* 53 S.E.2d 754 (Ga. 1949) and in *Hasty v. Meaders,* 202 S.E.2d 263 (Ga. 1973), the Georgia Courts specifically say that value is a matter of opinion and not of fact.

The question presented is one of substantial importance. Under present banking practices, appraisals are required for loans on property of every type and description ranging from jewelry to real property. In some areas, there are definite standards for appraisals which have been created by those engaged in the business of appraising; real estate appraisals are of course an outstanding example. Insofar as the record in this case reflects, there are no standards whatsoever for cattle appraisals. The appraisal simply represents the opinion of the appraiser. Similar appraisals are being relied on every day by every bank in the country with respect to all kinds of personalty. The net result of this case is that if an opinion as to the value of the property is wrong, the borrower can be convicted of making a false statement and presumably so can the appraiser. We respectfully submit that if this is to be the law, it will have a substantial impact upon banking practice and procedure throughout the country, not to mention on the making of appraisals. It is obvious that an appraiser can only give an estimate of value. It would certainly appear that the estimate of value is not a statement of fact but is merely an opinion. The statute at bar itself attempts to remedy what congress foresaw as a problem by providing that someone who willfully over values property can be indicted for so doing, although that was not the method employed by the Government here. Be that as it may, for the purpose of this point, the statute clearly in the context of the indictment in this case calls for the making of a false statement of fact and not opinion. We respectfully suggest that this principle ought be enunciated and adopted by this Court.

2) The Government Must Demonstrate That the Appraisal Was Inaccurate Before It Can Convict.

Assuming that an appraisal can be a statement of material fact for the purpose of violating the statute, the Government must prove beyond and to the exclusion of every reasonable doubt that the appraisal submitted was false. In the case at bar, the evidence on the value of the cattle consisted of the appraisal prepared by Mr. Ballard; the subsequent testimony at trial by Mr. Ballard that the cattle were worth less than the amount he appraised them for, if they were to be ground out for hamburger meat, and the testimony of Mr. Amole, a seasoned, experienced cattle buyer, that the appraised value was about what the cattle would be worth at sale. We respectfully suggest that to convict Mr. Shepard based upon an opinion which is not shown to be false is a departure from the essential requirements of the law and a denial of due process.

3) The Appraisal Cannot Be Material Because the Bank Had Already Predetermined to Make the Loans in Question.

The record clearly reflects that the bank acted through Mr. Jackson. Mr. Jackson wanted to keep the county's 40 to 50 million dollar accounts in his bank and had predetermined that he was going to make Mr. Vickers the loans Mr. Vickers wanted. In fact, on at least one occasion, the loan was disbursed before the Loan Committee met. The appraisal submitted did not and could not have influenced the bank in any way in terms of making the loan because the decision had been made before the appraisal was even thought of. We do not contend that an appraisal cannot influence a bank in the making of a loan. What we say is that in this case the appraisal

did not influence the bank in making the loan because the appraisal played no part in the bank's action. It was obtained and clearly obtained only for the purpose of completing the bank's files after the decisions had been made.

For example, let us assume that Mr. Vickers came to Mr. Jackson and said I want to borrow $10,000 for 30 days. Mr. Jackson said fine, sign this note and I'll put the mony in your account immediately, you will need to supply us with a Financial Statement. Mr. Vickers said OK. Vickers goes on vacation for a month. Immediately on returning to the city, he pays the note 30 days after date at its maturity and Jackson says, remember, I still need the Financial Statement. Vickers says, OK and he submits a Financial Statement which in fact contains false statements. Can a charge under this statute be sustained? We suggest that it cannot. This statement was not material to the making of the loan. It could not have been submitted for the purpose of influencing the bank since whether it was false or true, the loan would have been made precisely in acccordance with the terms of the note. That is exactly what happened in this case. The loan was made precisely in accordance with Mr. Jackson's determination that the bank was going to make it in order to protect its deposits of profits and in fact the loan was made in precisely that way. The submission of this instrument was not for the purpose of influencing the bank.

U. S. v. Krause, 507 F.2d 113 (5 Cir. 1975) and *Weinstock v. U. S.,* 231 F.2d 699 (CA D.C. 1955) indicate that the statement under the statute must be false as to a material fact and a material fact is one capable of influencing the action of the Respondent. Here, regardless

of what was submitted, the action of the Respondent would have been the same. Jackson would have made the loan to keep the deposits.

CONCLUSION

We respectfully suggest that this case presents questions which have never been ruled upon by this Court and which are obviously materially impactive, both on the interpretation of the statute and upon banking practices throughout the country. In a day when an appraisal or an opinion of value of some kind is a standard part of the loan process in tens of thousands of bank loans every year, we suggest that it is important to the commercial community as well as to Mr. Shepard individually to have the questions presented by this appeal resolved. We suggest that an appraisal is not a statement of material fact; we suggest that if an appraisal is to be considered a statement of material fact, then the appraisal must be proven wrong before someone can be sent to jail on account of it; and we suggest and urge that no document can be a statement of material fact as to a loan which is a fait accompli before the document is ever drafted, much less submitted to the bank.

Wherefore, Petitioner respectfully requests that certiorari issue to the United States Court of Appeals for the Eleventh Circuit to review the decision herein complained of and that the decision be quashed.

Respectfully submitted,

SHALLE STEPHEN FINE
(Counsel of Record)
46 S. W. First Street
Miami, Florida 33130
305/358-1515
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Petition for Certiorari were this 16th day of June, 1987 mailed to Gary Librick, Esq., Assistant United States Attorney, 500 Zack Street, Room 410, Tampa, Florida 33602, and to the Solicitor General of the United States, Main Justice Building, 10th & Constitution, N.W., Washington, D.C. 20530.

SHALLE STEPHEN FINE

APPENDIX

DO NOT
PUBLISH

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 86-3235
Non-Argument Calendar

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

VERNON E. VICKERS and CARL J. SHEPARD,
Defendants-Appellants.

Appeals from the United States District Court
for the Middle District of Florida

(December 11, 1986)

Before RONEY, Chief Judge, HILL and KRAVITCH, Circuit Judges.

PER CURIAM:

Based on loans defendant Vernon E. Vickers obtained from banks for the purchase of cattle from defendant Carl J. Shepard, the two defendants were convicted of one count of conspiracy in violation of 18 U.S.C.A. § 371 and several substantive counts of making false statements to banks in violation of 18 U.S.C.A. § 1014. Defendants claim the evidence was insufficient to support their con-

victions and that the trial court erred in instructing the jury that a defendant's complicity with a bank officer is not a defense under 18 U.S.C.A. § 1014. We affirm.

The insufficiency of evidence argument suggests two things: *first,* that the documentation supplied the banks in connection with the loans was not of criminal significance because the banks had determined to make the loans before receiving the supporting documents, and *second,* appraisals of cattle are opinions, and cannot be the basis of a false statement of fact claim.

Vickers, a county commissioner in Manatee County, Florida, applied for several loans in order to purchase cattle from Shepard, submitting financial statements to the lender banks in which he underreported his financial liabilities, and submitting appraisals of the cattle to serve as collateral for the loans.

Vickers contends the loans were approved because of his status as a county commissioner and because the county government had several million dollars on deposit in one of the banks, so that there was a failure to prove an intent to defraud because the defendants knew the documents would not be relied upon by the banks. The question is not whether the banks actually relied or were influenced by the false statements, however, but rather whether the statements were capable of influencing the loan decision. *United States v. Pierce,* 733 F.2d 1474, 1478 (11th Cir. 1984); *United States v. Scott,* 701 F.2d 1340, 1345 (11th Cir.), *cert. denied,* 464 U.S. 856 (1983); *United States v. Kelley,* 615 F.2d 378, 379-80 (5th Cir. 1980); *United States v. Johnson,* 585 F.2d 119, 124-25 (5th Cir. 1978). The direct testimony of the bank officers of the respective banking institutions explained the significance that financial statements, appraisals, and statements of purpose have

on their respective banks regarding applications for loans. Each banker testified that the statements made to their institutions in connection with the loans applied for had the capacity to influence their bank's actions. The bank records of Vickers' true liabilities establish the falsity of the financial statements. The testimony establishes that the appraisals purportedly made by Dave Ballard, an unindicted coconspirator, were never actually made. The defendants were told by Roy Jackson, Executive Vice-President of First National Bank of Florida, that the bank would lend seventy-five to eighty percent of the appraised value of the cattle. Defendants used the appraisal statements to obtain full financing for the purchase of the cattle.

Viewed most favorably to support the jury verdict, this evidence is sufficient for a reasonable trier of fact to determine that the defendants were guilty as charged.

The argument that the cattle appraisals are statements of opinion and therefore cannot be a false statement of material fact is meritless. A statement concerns a material fact when it has the capacity to influence the lending institution. *United States v. Braverman,* 522 F.2d 218, 223 (7th Cir.), *cert. denied,* 423 U.S. 985 (1975) (citations omitted); *accord, United States v. Johnson,* 585 F.2d at 124. Defendants knew that the bank would rely on the valuation to establish the amount of money to be loaned. They claimed that the appraisals were accurate, but Ballard testified that no appraisal was actually made, that he did not inspect the cattle which were the subject of the appraisal, and that he did not inquire about the ownership or location of the cattle. The appraisal was prepared in Shepard's office, with values provided to Ballard by Shepard, and on forms provided by Ballard. When Ballard testified that he believed the cattle to be worth less than the appraised value, the defendants pre-

sented expert testimony in direct contradiction. The degree of weight to give to this testimony was for the jury. *United States v. Cole,* 755 F.2d 748, 755 (11th Cir. 1985).

The trial court instructed the jury that complicity with a bank officer is not a defense under 18 U.S.C.A. § 1014. Admitting that the jury charge was a correct statement of the law, the defendants nonetheless argue prejudice because their theory of defense did not include complicity as a defense. The record reflects otherwise. Although the Government denied that Roy Jackson was an unindicted coconspirator, defendants argued and solicited testimony that Jackson, on behalf of First National Bank of Florida, was masterminding a scheme to loan extensive funds to Vickers in order to enrich the bank and himself. The court's instruction, when read as a whole, was appropriate based upon the evidence and inferences to be considered by the jury.

We have reviewed defendants' remaining claims and find them meritless.

AFFIRMED

(Filed April 23, 1987)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 86-3235

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

VERNON E. VICKERS and
CARL J. SHEPARD,
Defendants-Appellants.

Appeal from the United States District Court for the
Middle District of Florida

ON PETITION(S) FOR REHEARING

(April 23, 1987)

BEFORE: RONEY, Chief Judge, HILL and KRAVITCH, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by appellants are denied.

ENTERED FOR THE COURT:

/s/ Paul H. Roney
United States Circuit Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 85-109-Cr-T-17

UNITED STATES OF AMERICA

v.

VERNON E. VICKERS

and

CARL J. SHEPARD

INDICTMENT

The Grand Jury charges that:

Count One

Beginning in or about February, 1981, the exact date being unknown to the Grand Jury, and continuing thereafter up to and including in or about February, 1985, in the Middle District of Florida, and elsewhere, the defendants,

VERNON E. VICKERS

and

CARL J. SHEPARD,

unlawfully, willfully and knowingly did combine, conspire, confederate and agree together with each other and with persons known and unknown to the Grand Jury to

commit offenses against the United States, that is, to knowingly and willfully make and cause to be made false statements as to material facts in connection with applications for loans submitted to the First National Bank of Florida, Barnett Bank, and the Palmetto Bank and Trust Company, the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the actions of said banks, in violation of Title 18, United States Code, Section 1014.

The Manner and Means of the Conspiracy

1. It was a part of the conspiracy that the defendants VICKERS and SHEPARD would make or cause to be made and submit or cause to be submitted various false and fraudulent statements and documents to the First National Bank of Florida, Barnett Bank, and the Palmetto Bank and Trust Company for the purpose of causing the banks to make various loans.

2. It was a further part of the conspiracy that the defendant VICKERS would obtain loans in his own name and then transmit or transfer the loan proceeds or monies to the defendant SHEPARD.

3. It was a further part of the conspiracy that the defendants VICKERS and SHEPARD would and did perform acts and make statements to misrepresent, conceal and hide, and cause to be misrepresented, concealed and hidden, the purposes of and acts done in furtherance of said conspiracy.

Overt Acts

In furtherance of the conspiracy and in order to effect the objects thereof, the following overt acts, among others, were committed in the Middle District of Florida and elsewhere:

1. On or about February 9, 1981, VICKERS submitted a financial statement to the First National Bank of Florida.

2. On or about April 13, 1981, SHEPARD had a conversation with Dave Ballard.

3. On or about April 13, 1981, VICKERS and SHEPARD caused a cattle appraisal to be submitted to the First National Bank of Florida.

4. On or about April 13, 1981, VICKERS received a $67,000 loan from the First National Bank of Florida.

5. On or about April 15, 1981, SHEPARD prepared a bill of sale.

6. On or about June 3, 1981, SHEPARD had a conversation with Dave Ballard.

7. On or about June 3, 1981, VICKERS and SHEPARD caused a cattle appraisal to be submitted to the First National Bank of Florida.

8. On or about June 3, 1981, VICKERS received a $27,250 loan from the First National Bank of Florida.

9. On or about June 22, 1981, SHEPARD had a conversation with Dave Ballard.

10. On or about June 22, 1981, VICKERS and SHEPARD caused a cattle appraisal to be submitted to the First National Bank of Florida.

11. On or about June 24, 1981, VICKERS received a $45,500 loan from the First National Bank of Florida.

12. On or about June 12, 1981, VICKERS received a $20,000 loan (No. 0501895) from the First National Bank of Florida with an actual disbursement of $19,970.

13. On or about June 12, 1981, VICKERS wrote a check in the amount of $20,000 to Nu-Way Cash & Carry.

14. On or about June 12, 1981, SHEPARD caused the $20,000 check from VICKERS to be deposited into an account of Nu-Way Cash & Carry.

15. On or about August 7, 1981, VICKERS received a $20,000 loan (No. 0501935) from the First National Bank of Florida with an actual disbursement of $19,970.

16. On or about August 7, 1981, VICKERS wrote a check in the amount of $20,000 to SHEPARD.

17. On or about August 7, 1981, SHEPARD deposited the $20,000 check from VICKERS into an account of Nu-Way Cash & Carry.

18. On or about February 6, 1984, SHEPARD paid $10,000 to VICKERS.

19. On or about February 6, 1984, VICKERS paid $10,000 to the First National Bank of Florida to reduce the amount owed on Loan No. 0501935.

20. On or about June 30, 1984, SHEPARD wrote a check to the First National Bank of Florida in the amount of $10,147.32 to pay off the balance owed on Loan No. 0501935, which loan was in the name of VICKERS.

21. On or about November 18, 1982, VICKERS obtained a $20,000 loan from Barnett Bank and received a disbursement check in the amount of $19,970 from Barnett Bank.

22. On or about November 18, 1982, VICKERS used the $19,970 Barnett Bank check to purchase a cashier's check at the First Commercial Bank of Manatee County in the amount of $19,970, made payable to Red Barn Flea Market.

23. On or about November 18, 1982, SHEPARD deposited the $19,970 cashier's check from the First Com-

mercial Bank of Manatee County into an account of the Red Barn Flea Market at Barnett Bank.

24. On or about July 2, 1984, the remaining balance on the $20,000 Barnett Bank loan was paid off by SHEPARD.

25. On or about January 30, 1985, SHEPARD provided a deposition in a Manatee County civil case.

26. On or about February 26, 1985, VICKERS provided a deposition in a Manatee County civil case.

All in violation of Title 18, United States Code, Section 371.

Count Two

On or about February 9, 1981, in the Middle District of Florida, the defendant,

VERNON E. VICKERS,

knowingly and willfully made and caused to be made a false statement as to a material fact in a Personal Financial Statement submitted in connection with an application for a loan to the First National Bank of Florida, the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank, in that the defendant stated and represented to said bank that his total liabilities were $125,800 (consisting of notes payable to others, unsecured, in the amount of $800 and mortgage payable on real estate, in the amount of $125,000), when in truth and fact as the defendant then knew, his total liabilities were not $125,800 and he had failed to list all his outstanding liabilities.

In violation of Title 18, United States Code, Section 1014.

Count Three

On or about April 13, 1981, in the Middle District of Florida, the defendants,

VERNON E. VICKERS

and

CARL J. SHEPARD,

knowingly and willfully made and caused to be made a false statement as to a material fact in a "cattle appraisal" submitted in connection with an application for a loan to the First National Bank of Florida, the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank, in that the defendants submitted and caused to be submitted to said bank a document purporting to be a cattle appraisal made by one Dave Ballard, when in truth and fact as the defendants then knew, no cattle appraisal had been made by Dave Ballard.

In violation of Tilte 18, United States Code, Sections 1014 and 2.

Count Four

On or about June 3, 1981, in the Middle District of Florida, the defendants,

VERNON E. VICKERS

and

CARL J. SHEPARD,

knowingly and willfully made and caused to be made a false statement as to a material fact in a "cattle appraisal" submitted in connection with an application for a loan to the First National Bank of Florida, the deposits of

which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank, in that the defendants submitted and caused to be submitted to said bank a document purporting to be a cattle appraisal made by one Dave Ballard, when in truth and fact as the defendants then knew, no cattle appraisal had been made by Dave Ballard.

In violation of Title 18, United States Code, Sections 1014 and 2.

Count Five

On or about June 22, 1981, in the Middle District of Florida, the defendants,

VERNON E. VICKERS

and

CARL J. SHEPARD,

knowingly, and willfully made and caused to be made a false statement as to a material fact in a "cattle appraisal" submitted in connection with an application for a loan to the First National Bank of Florida, the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank, in that the defendants submitted and caused to be submitted to said bank a document purporting to be a cattle appraisal made by one Dave Ballard, when in truth and fact as the defendants then knew, no cattle appraisal had been made by Dave Ballard.

In violation of Title 18, United States Code, Sections 1014 and 2.

Count Six

On or about June 12, 1981, in the Middle District of Florida, the defendant,

VERNON E. VICKERS,

knowingly and willfully made and caused to be made a false statement as to a material fact in connection with an application for a loan in the amount of $20,000 (No. 0501895) to the First National Bank of Florida, the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank, in that the defendant stated and represented to said bank that the purpose of the loan was to purchase inventory for his plant nursery, when in truth and fact as the defendant then knew, the purpose of the loan was not to purchase inventory for his plant nursery but to provide monies to CARL J. SHEPARD through Nu-Way Cash & Carry.

In violation of Title 18, United States Code, Section 1014.

Count Seven

On or about August 7, 1981, in the Middle District of Florida, the defendant,

VERNON E. VICKERS,

knowingly and willfully made and caused to be made a false statement as to a material fact in connection with an application for a loan in the amount of $20,000 (No. 0501935) to the First National Bank of Florida, the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the

action of said bank, in that the defendant stated and represented to said bank that the purpose of the loan was to purchase inventory for his plant nursery, when in truth and fact as the defendant then knew, the purpose of the loan was not to purchase inventory for his plant nursery but to provide monies to CARL J. SHEPARD through Nu-Way Cash & Carry.

In violation of Title 18, United States Code, Section 1014.

Count Eight

On or about August 11, 1982, in the Middle District of Florida, the defendant,

VERNON E. VICKERS,

knowingly and willfully made and caused to be made a false statement as to a material fact in a Personal Financial Statement submitted in connection with an application for a loan to the Palmetto Bank and Trust Company, the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank, in that the defendant stated and represented to said bank that his total liabilities were $16,000 (sic) (consisting of notes payable to banks, secured in the amount of $3,200 and mortgages payable on real estate, in the amount of $13,000), when in truth and fact as the defendant then knew, his total liabilities were not $16,000 (sic) and he had failed to list all his outstanding liabilities.

In violation of Title 18, United States Code, Section 1014.

Count Nine

On or about November 10, 1982, in the Middle District of Florida, the defendant,

VERNON E. VICKERS,

knowingly and willfully made and caused to be made a false statement as to a material fact in a Financial Statement submitted in connection with an application for a loan to the Palmetto Bank and Trust Company, the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank, in that the defendant stated and represented to said bank that his total liabilities were $86,200 (consisting of notes payable, for real estate in the amount of $13,000, to banks (cattle) in the amount of $70,000, and to others in the amount of $3,200), when in truth and fact as the defendant then knew, his total liabilities were not $86,200 and he had failed to list all his outstanding liabilities.

In violation of Title 18, United States Code, Section 1014.

Count Ten

On or about November 18, 1982, in the Middle District of Florida, the defendant,

VERNON E. VICKERS,

knowingly and willfully made and caused to be made a false statement as to a material fact in a Statement of Purpose made in connection with an application for a loan in the amount of $20,000 to the Barnett Bank, the deposits of which were then insured by the Federal De-

posit Insurance Corporation, for the purpose of influencing the action of said bank, in that the defendant stated and represented to said bank that the proceeds of said loan would be used for the purpose of opening a produce market, when in truth and fact as the defendant then knew, the purpose of the loan was not to open a produce market but to provide monies to CARL J. SHEPARD through Red Barn Flea Market.

In violation of Title 18, United States Code, Section 1014.

Count Eleven

On or about November 19, 1982, in the Middle District of Florida, the defendant,

VERNON E. VICKERS,

knowingly and willfully made and caused to be made a false statement as to a material fact in a Personal Financial Statement submitted in connection with an application for a loan to the Barnett Bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank, in that the defendant stated and represented to said bank that his total liabilities were $150,000 (consisting of other liabilities, Vicker's Annual Plants, Inc., in the amount of $150,000), when in truth and in fact, as the defendant then knew, his total liabilities were not $150,000 and he had failed to list all his outstanding liabilities.

In violation of Title 18, United States Code, Section 1014.

A True Bill,

/s/ (Illegible)
Foreman

/s/ Robert W. Merkle
Robert W. Merkle
United States Attorney

/s/ John M. Fitzgibbons
John M. Fitzgibbons
Assistant United States Attorney
Deputy Chief, Criminal Division

No. 85-109-Cr-T-17

UNITED STATES DISTRICT COURT

MIDDLE District of FLORIDA

TAMPA Division

THE UNITED STATES OF AMERICA

vs.

VERNON E. VICKERS
AND
CARL J. SHEPARD

INDICTMENT

Vio: 18,U.S.C. §§371, 1014, 2
Consp., False statements to Banks

A true bill.

[signature]
Foreman

Filed in open court this 21ST day

of AUGUST A.D. 19 85

DONALD M. CINNAMOND
Clerk

Robert L. Davis, Jr., DEPUTY CLERK

Bail, $ _____

GPO 880.370

UNITED STATES DISTRICT COURT
FOR MIDDLE DISTRICT OF
FLORIDA – TAMPA DIVISION

DOCKET NO. 85-109-Cr-T-17

UNITED STATES OF AMERICA,

v.

CARL J. SHEPARD,
Defendant.

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date
(Month) 03 (Day) 28 (Year) 85

COUNSEL

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by by the court and the defendant thereupon waived assistance of counsel

[XX] WITH COUNSEL (Name of Counsel)
Larry Byrd

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea.

☐ NOLO CONTENDERE, [XX] NOT GUILTY

FINDING & JUDGMENT

There being a verdict of	(	☐ NOT GUILTY. Defendant is discharged
	(	[XX] GUILTY.

Defendant has been convicted as charged of the offense(s) of Conspiracy (false statement to bank) in violation of Title 18, USC, Section 371 as charged in count one of the Indictment. False statement to bank in violation of Title 18, USC, Section 1014 as charged in counts three, four and five of the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS as to count 1. Execution of all of the same, except SIX (6) MONTHS, to be suspended and the defendant is placed on probation for the remainder of the sentence under the standing conditions of probation.

TWO (2) YEARS as to each count 3, 4 & 5. Execution of all of the same, except SIX (6) MONTHS, to be suspended and the defendant is placed on probation for the remainder of the sentence under the standing conditions of probation. All counts to run concurrent. A fine of $2,000.00 in imposed on each count 1, 3, 4 & 5 to run consecutive, for a total fine of $8,000.00.

SPECIAL CONDITIONS OF PROBATION

It Is Further Adjudged that execution of commencement of the Sentence imposed herein is deferred until 12:00 noon the 17th day of June 1986, by which time the defendant shall report, at his own expense, to the Institution designated by the Bureau of Prisons.

ADDITIONAL CONDITIONS OF PROBATION

Offense committed before 1/1/85

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

Eglin, AFB

SIGNED BY

[XX] U.S. District Judge

/s/ (Illegible)

☐ U.S. Magistrate

Elizabeth A. Kovachevich

Date 03/25/86

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Certified As a True Copy On

THIS DATE .....

By .....

( ) CLERK

( ) DEPUTY